IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

CRL.A.No. 257 of 1997

ST.4410/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

.....

APPELLANT/COMPLAINANT:

K.D. VARGHESE, AGED 28 YEARS, MANAGER AND POWER OF ATTORNEY HOLDER, M/S.VEE-SEVEN ENGINEERING, SAW MILL ROAD, KOOKANCHERRY, THRISSUR - 7.

BY ADV. SRI.P.K.ABOOBACKER (EDATHALA)
SRI.P.K.IBRAHIM
SRI.P.CHANDRASEKHAR

RESPONDENTS/ACCUSED:

1. M/S.CUDDAPAH TYRE WORKS, RAMANJANEYAPURAM, CUDDAPAH - 516002, REPRESENTED BY V.SIVAKUMAR REDDY.

2. V. SIVAKUMAR REDDY, PARTNER, M/S.CUDDAPAH TYRE WORKS, MADRAS ROAD, CUDDAPAH - 516002, ANDHRA PRADESH.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.A. No.257 of 1997

Dated this the 31st day of January, 2007

Judgment

This appeal is filed by the complainant under section 138 of the Negotiable Instruments Act against acquittal of the accused under section 256 (1) of the Code of Criminal Procedure for the absence of the complainant. Though notice was issued by this Court and served through Judicial First Class Magistrate's Court, Cuddapah, respondent did not enter appearance before this court. Case of the complainant is that since the Judicial First Class Magistrate took cognizance of the case and adjourned the matter, he thought that next date of posting will be before the same court. His advocate appeared before that court, but, he learnt that the case was transferred to Judicial First Class Magistrate's Court, Thrissur. He was absent because of these circumstances. Even otherwise, summons was not served to the accused by the trial court. In the above circumstances, acquittal of the accused in the first posting itself by the Judicial First Class Magistrate, Thrissur was uncalled for. Even though accused can be acquitted for the absence of the complainant, it cannot be done mechanically. Presence of the complainant can be insisted upon only if his presence is required

mandatorily. In this case, appellant has given valid reasons for his non-appearance. In the above circumstances, impugned order is set aside. Appeal is allowed by way of remand.

The complainant shall appear before the trial court on 26.3.2007 and the Magistrate shall proceed with the matter according to law.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl.A.No.257 of 1997

Judgment

31-1-2007